

IN THE SUPREME COURT OF TENNESSEE
SPECIAL WORKERS COMPENSATION APPEALS PANEL
AT JACKSON
June 28, 2005 Session

ELIZABETH NORTHERN v. SONOCO PRODUCTS COMPANY

**Appeal from the Chancery Court for Madison County
No. 61158 James F. Butler, Chancellor**

No. W2004-02538-WC-R3-CV - Mailed February 16, 2006; Filed March 22, 2006

This is a workers' compensation appeal referred to and heard by the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tennessee Code Annotated section 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law. The defendant contends that the trial court erred in awarding the plaintiff a 25% permanent partial disability rating to both arms for bilateral carpal tunnel syndrome and right trigger thumb and ring finger. We disagree and therefore affirm the judgment of the trial court.

**Tenn. Code Ann. § 50-6-225(e) (1999) Appeal as of Right; Judgment of the Trial Court
Affirmed**

CLAYBURN PEEPLES, SP.J., delivered the opinion of the court, in which JANICE M. HOLDER, J., and RON E. HARMON, SP.J., joined.

Kevin Washburn and Richard H. Allen, Memphis, Tennessee, for the Defendant-Appellant, Sonoco Products Company.

Jeffrey P. Boyd, Jackson, Tennessee, for the Plaintiff-Appellee, Elizabeth Northern.

MEMORANDUM OPINION

The issue raised by the appeal is whether the trial court erred in awarding plaintiff a 25% disability rating due to conditions known as bilateral carpal tunnel syndrome and right trigger thumb and ring finger, both of which she developed during the course of, and as a result of, her employment with the defendant.

After a trial on the merits, the trial court found plaintiff's injuries to be compensable under workers' compensation laws of the State of Tennessee and that the appropriate anatomical rating for her condition would be 5% to each arm. The trial court also awarded benefits to the plaintiff based upon a disability rating of 25% to both arms.

Defendant contends that the evidence introduced at trial does not support the trial court's finding as to plaintiff's injuries or the assigned anatomical injury. We disagree and believe that it does.

The plaintiff, Elizabeth Northern, was, at the time of this action, a fifty-six-year-old employee of defendant, Sonoco Products Company, having worked there for approximately eighteen years. She is a high school graduate and has completed "a few" classes at a local junior college. Prior to her employment with defendant Sonoco, she worked for several other companies in various manual labor positions.

The proof indicates that during her employment with defendant Sonoco the plaintiff worked at various positions, some of which involved lifting, pushing, pulling and repetitive actions. She also acted, at times, as a trainer of other employees. One of her jobs was as a "palletizer" of Pringles Potato Chip cans, a job that consisted of stacking manufactured cardboard cans ten deep onto pallets and securing the pallets thus assembled with wooden frames. She also, at some point during her employment, worked as a "PSO operator," a job that required her to maintain two production lines by supplying them with lids for cans and also to take general responsibility for the upkeep of both lines.

In April of 2003 plaintiff reported pain and cramping in her hands, and in May of 2003 she left her employment due to what was later learned to be bilateral carpal tunnel syndrome. She was also diagnosed with a condition known as trigger thumb and ring finger. She returned to work, ten months later, after undergoing surgery for bilateral carpal tunnel releases and resumed employment as a palletizer. The record contains no evidence regarding her surgery other than that it was performed.

Dr. Joseph Boals and Dr. Riley Jones, independent medical examiners, both testified, Dr. Boals for plaintiff and Dr. Jones for defendant, regarding the plaintiff's anatomical impairment. Dr. Boals, who examined plaintiff on February 5, 2004, concluded that she retained a 15% permanent impairment to each arm, and that said impairment was casually related to her employment with defendant. Dr. Jones, who examined plaintiff on April 9, 2004, concluded that she suffered no permanent medical impairment or work restriction at that time as a result of her work related injuries. When asked about Dr. Jones' conclusions, Dr. Boals testified that her condition was one that continues to heal over time and that had he, Dr. Boals, had access to the results of Dr. Jones' later examination he, Dr. Boals, would have lowered his impairment rating to 10%.

The plaintiff testified that she is only able to perform her present job, that as a "palletizer" with difficulty, in that it requires some manual dexterity, strength and gripping power.

Taking all the evidence into consideration, the trial court concluded that plaintiff had sustained injuries to both arms in April, 2003, and May, 2003, and that those injuries arose out of and occurred in the course and scope of her employment with defendant. Those injuries were, the trial court concluded, sufficient to entitle her to a judgment for 25% permanent partial disability both arms.

In this appeal the defendant argues that this award is excessive.

We must begin by acknowledging that for injuries occurring on or after July 1, 1985, appellate review is *de novo* upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e)(2) (2001 Supp.). Thus, in reviewing the trial court's findings we are required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. *Wingert v. Government of Sumner County*, 908 S.W.2d 921, 922 (Tenn. 1995). Where the trial judge has seen and heard the witnesses, however, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be accorded those circumstances on review, because of the trial court's opportunity to observe witnesses' demeanors and to hear their testimony. *Long v. Tri-Con Ind., Ltd.*, 996 S.W.2d 173, 177 (Tenn. 1999).

The standard is somewhat different with regard to medical testimony when presented by deposition, as it was in this case. In such situations, the reviewing court is able to make its own independent assessment of the medical proof to determine where the preponderance of the evidence lies. *Cooper v. Ins. Co. of N. Am.*, 884 S.W.2d 446, 451 (Tenn. 1994). Even so, when medical testimony differs, it is in the discretion of the trial court to determine which expert testimony to accept. *Story v. Legion*, 3 S.W.3d 450, 455 (Tenn. 1999). In making that determination the trial court is allowed to consider both the qualifications of the experts and the circumstances of their examinations, along with all other information available to them, and how the experts evaluated that information as well as the importance they attached to it. *Orman v. Williams Sonoma, Inc.*, 803 S.W.2d 672, 676 (Tenn. 1991). Then, once causation and permanency have been established to the satisfaction of the trial court, vocational disability can be fixed utilizing the medical proof favored by the court. *Corcoran v. Foster Auto GMC, Inc.* 746 S.W.2d 452 (Tenn. 1998). Finally, we must note that the extent of an injured worker's disability is an issue of fact. *Walker v. Saturn Corp.*, 986 S.W.2d 204, 207 (Tenn. 1998).

Defendant Sonoco contends that the trial court's award of benefits is excessive because of the low impairment ratings provided by the testifying surgeons, the fact that she returned to work as a "palletizer" after surgery and that she has several transferable skills. Our courts have held, however, that while the fact of employment after injury is a factor to be considered in determining the extent of an injured worker's disability, that fact is to be weighed in light of all other considerations, including the employee's skills and training, his or her education and age, the existence, or lack thereof, of local job opportunities as well as the worker's capacity to work at the kinds of employment in his or her disabled condition. Additionally, the ratings of anatomic disability by medical experts and the employee's own assessment of his or her physical condition and resulting disability are to be considered. *Cleek v. Wal-Mart Stores, Inc.*, 19 S.W.3d 770, 774 (Tenn. 2000).

The trial court, after considering all the proof, including the plaintiff's age, her educational background and limited employment skills and experience, as well as limited potential job opportunities now available to her, concluded that she is permanently injured and that her injury was incurred in the course and scope of her employment with defendant Sonoco Products Company. The trial court then awarded her an anatomical rating of 5% to both arms and found her vocational disability to be 25% to both arms.

Giving appropriate deference to the finding of the trial court, we cannot say that the evidence preponderates against its findings with respect to the extent of plaintiff's vocational disability. Therefore, the judgment of the trial court is affirmed. Costs are to be taxed to the appellant, Sonoco Products Company, and its surety in which execution may render if necessary.

CLAYBURN PEEPLES, SPECIAL JUDGE

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JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference;

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs on appeal are taxed to the Appellant, Sonoco Products Company, for which execution may issue if necessary.

IT IS SO ORDERED.

PER CURIAM